

## § 435.1 Definitions.

For purposes of this part:

(a) *Mail or telephone order sales* shall mean sales in which the buyer has ordered merchandise from the seller by mail or telephone, regardless of the method of payment or the method used to solicit the order.

(b) *Prompt refund* shall mean:

(1) Where a refund is made pursuant to paragraph (d)(1) or (2)(iii) of this section, a refund sent to the buyer by first class mail within seven (7) working days of the date on which the buyer's right to refund vests under the provisions of this part;

(2) Where a refund is made pursuant to paragraph (d)(2)(i) or (ii) of this section, a refund sent to the buyer by first class mail within one (1) billing cycle from the date on which the buyer's right to refund vests under the provisions of this part.

(c) *Receipt of a properly completed order* shall mean, where the buyer tenders full or partial payment in the proper amount in the form of cash, check, money order, or authorization from the buyer to charge an existing charge account, the time at which the seller receives both said payment and an order from the buyer containing all of the information needed by the seller to process and ship the order. Provided, however, that where the seller receives notice that the check or money order tendered by the buyer has been dishonored or that the buyer does not qualify for a credit sale, *receipt of a properly completed order* shall mean the time at which:

(1) The seller receives notice that a check or money order for the proper amount tendered by the buyer has been honored;

(2) The buyer tenders cash in the proper amount; or

(3) The seller receives notice that the buyer qualifies for a credit sale.

(d) *Refund* shall mean:

(1) Where the buyer tendered full payment for the unshipped merchandise in the form of cash, check, or money order, a return of the amount tendered in the form of cash, check, or money order;

(2) Where there is a credit sale:

(i) And the seller is a creditor, a copy of a credit memorandum or the like or

an account statement reflecting the removal or absence of any remaining charge incurred as a result of the sale from the buyer's account;

(ii) And a third party is the creditor, a copy of an appropriate credit memorandum or the like to the third party creditor which will remove the charge from the buyer's account or a statement from the seller acknowledging the cancellation of the order and representing that it has not taken any action regarding the order which will result in a charge to the buyer's account with the third party;

(iii) And the buyer tendered partial payment for the unshipped merchandise in the form of cash, check, or money order, a return of the amount tendered in the form of cash, check, or money order.

(e) *Shipment* shall mean the act by which the merchandise is physically placed in the possession of the carrier.

(f) *Telephone* refers to any direct or indirect use of the telephone to order merchandise, regardless of whether the telephone is activated by, or the language used is that of human beings, machines, or both.

(g) The *time of solicitation* of an order shall mean that time when the seller has:

(1) Mailed or otherwise disseminated the solicitation to a prospective purchaser;

(2) Made arrangements for an advertisement containing the solicitation to appear in a newspaper, magazine or the like or on radio or television which cannot be changed or cancelled without incurring substantial expense; or

(3) Made arrangements for the printing of a catalog, brochure or the like which cannot be changed without incurring substantial expense, in which the solicitation in question forms an insubstantial part.

## § 435.2 Mail or telephone order sales.

In connection with mail or telephone order sales in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, it constitutes an unfair method of competition, and an unfair or deceptive act or practice for a seller:

(a)(1) To solicit any order for the sale of merchandise to be ordered by the